

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.MC.No. 3967 of 2006(B)

CC.76/2004 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
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PETITIONER: PETITIONER IN THE CRL. M.C.

1. MOHAMMED MUSTAK,
THANDUPURACKAL, SHANI MANSION,
KARULAI P.O., NILAMBUR.
2. RAEZ ABDULLA,
THANDUPURACKAL, RAEZ MANZIL,
KARULAI P.O., NILAMBUR.
3. AJITH,
AMBALAPARAMBIL, MODAPARA P.O.,
EDAKKARA, NILAMBUR.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS: RESPONDENTS

1. SMT. SANTA GOPINATHAN NAIR,
PANDIYIL, AMBADY TOWERS, PALLIMUKKU,
ERNAKULAM, NOW RESIDING AT 'MADUKKAL HOUSE',
KULANADA P.O., PATHANAMTHITTA.
2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.
SRI.J.KRISHNAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3967 OF 2006

Dated this the 5th day of February, 2007

ORDER

The petitioners are accused 1 to 3 in a prosecution initiated on the basis of a private complaint filed by the 1st respondent. The offences alleged are under Secs.120B, 192, 209, 323, 340, 356, 403 and 448 read with Sec.34 of the IPC. The crux of the allegations against the petitioners – three in number, is that on 29/3/2000 they trespassed into the residential house of the 1st respondent/complainant and indulged in wanton acts of violence and mischief. It is alleged specifically that the 1st respondent/complainant was compelled to sign six blank cheques and part with possession of those cheques. The petitioners have subsequently misutilised two of the said six cheques, it is alleged.

2. A complaint, alleging commission of the offences, was allegedly filed before the police on 16/6/2000. There is nothing to show that such a complaint has been filed. As the police did not allegedly take any action on the basis of such alleged complaint, the present complaint was filed before the

learned Magistrate on 8/1/2001. Cognizance was taken on the basis of the said complaint.

3. The petitioners have come to this Court with a prayer that powers under Sec.482 of the Cr.P.C. may be invoked to prematurely terminate the proceedings against the petitioners. The complaint is false. It is made with ulterior and oblique motive. If the complaint/prosecution were permitted to continue, it would result in failure/miscarriage of justice. The respondent's transparent attempt is to abuse the process of the court. In these circumstances, the complaint may be quashed, it is prayed.

4. The learned counsel for the petitioners relies on various circumstances. First of all, it is contended that notice demanding amounts payable under the cheque was issued and received by the complainant on 12/6/2000 and it is thereafter that even allegedly the complaint is filed before the police on 16/6/2000. The inaction – admitted inaction, of the complainant from 29/3/2000 is eloquent. Further it is pointed out that there is nothing to show that such a complaint was actually filed before the police on 16/6/2000 and the whisper of a complaint comes forth for the first time only on 8/1/2001 when the present private complaint was filed before the learned Magistrate.

5. The learned counsel for the petitioners further relies on

Annexure-A2. That is the suit filed by the respondent/complainant against the petitioners herein wherein identical allegations are raised. A prayer is made that the petitioners may be restrained from presenting the cheques. That suit was dismissed for non-prosecution. Later, making use of two of the six cheques which were allegedly taken away from the respondent on 29/3/2000, two criminal prosecutions and two civil suits were filed. By A3/A5 and A4/A5, those criminal prosecutions and the civil suits were disposed of holding that this theory of forcible removal of the cheques on 29/3/2000 is not acceptable. In the light of Exts.A2 to A6 continuation of the prosecution would be unjustified. The petitioners deserve to be spared of the undeserved trauma of this further prosecution, submits the learned counsel for the petitioners.

6. Having rendered my very anxious consideration to all the relevant inputs, I am of opinion that this is an eminently fit case where further proceedings in C.C.No.76/04 (Annexure-A1) initiated by the respondent herein against the petitioners deserve to be quashed. The totality of circumstances must unmistakably suggest to a prudent mind that permitting continuation of the prosecution would work out injustice and result in failure/miscarriage of justice. The grievance that the

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process of the court is being abused by the respondents by initiating Annexure-A1 complaint appears to me to be absolutely justified.

7. The powers under Sec.482 of the Cr.P.C. are to be invoked sparingly and in exceptional cases in aid of justice. No straight jacket formula can be prescribed to ascertain and identify that rare fit case in which powers under Sec.482 of the Cr.P.C. can be invoked. I need only say that there is no ring of truth in the allegations raised in the complaint and the sequence of events clearly show that such a complaint is filed only to vex and pressurise the petitioners. The prayer to invoke the powers under Sec.482 of the Cr.P.C., in these circumstances, deserves to be considered favourably.

8. In the result:

(a) This Crl.M.C. is allowed.

(b) C.C.No.76/04 against the petitioners is hereby quashed.

(R. BASANT, JUDGE)

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